



February 16, 2007

HOUSE BILL No. 1197

DIGEST OF HB 1197 (Updated February 13, 2007 10:57 am - DI 52)

Citations Affected: IC 13-11; IC 13-18; IC 15-3; noncode.

Synopsis: Regulation of confined feeding operations. Prohibits construction of a new confined feeding operation (CFO) within one mile of a licensed child care center, a public school, a licensed health facility, or a municipality. Requires the department of environmental management (IDEM) to establish civil penalty matrices for various categories of violations relating to CFOs. Requires IDEM to inspect each CFO at least one time each year. Applies an annual inspection fee on CFO's that is deposited in a confined feeding fund and used to fund IDEM CFO inspections. Requires the state chemist to: (1) establish a training program for CFO manure applicators and haulers; and (2) report to the general assembly concerning the training program.

Effective: Upon passage; July 1, 2007.

Pflum, Saunders

January 11, 2007, read first time and referred to Committee on Agriculture and Rural Development.
February 15, 2007, amended, reported — Do Pass.

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HB 1197—LS 7388/DI 52+



February 16, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1197

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-176.5, AS AMENDED BY P.L.1-2005,
2 SECTION 142, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: Sec. 176.5. "Public school", for
4 purposes of **IC 13-18-10** and IC 13-20-17.5, has the meaning set forth
5 in IC 20-18-2-15.

6 SECTION 2. IC 13-18-10-1.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. A new confined feeding**
9 **operation, including a CAFO, may not be constructed if any part**
10 **of the facility would be less than one (1) mile from the boundary of**
11 **any of the following:**

- 12 (1) **A parcel of land on which either of the following is located:**
13 (A) **A child care center licensed under IC 12-17.2-4.**
14 (B) **A public school.**
15 (C) **A health facility licensed under IC 16-28.**
16 (2) **A municipality.**

17 SECTION 3. IC 13-18-10-2.1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1. (a) The department:

(1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; ~~and~~

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination; **and**

(3) may not approve the application if the limitation in section 1.5 of this chapter applies to the confined feeding operation that is the subject of the application.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation that concerns manure handling and application to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

(e) The department may amend an approval or revoke an approval:

(1) for failure to comply with:

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- 1 (A) this chapter;
- 2 (B) rules adopted under this chapter;
- 3 (C) the water pollution control laws; or
- 4 (D) rules adopted under the water pollution control laws; and
- 5 (2) as needed to prevent discharges of manure into the
- 6 environment that pollute or threaten to pollute the waters of the
- 7 state.

8 SECTION 4. IC 13-18-10-6 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. A person who
 10 violates this chapter is subject to the penalties imposed by the
 11 following:

- 12 (1) IC 13-30-4.
- 13 (2) IC 13-30-5.
- 14 (3) IC 13-30-6.
- 15 (4) IC 13-30-8.
- 16 **(5) Section 7 of this chapter.**

17 SECTION 5. IC 13-18-10-7 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2007]: Sec. 7. **(a) The department shall establish civil penalty
 20 matrices for the following categories:**

- 21 **(1) First time violations.**
- 22 **(2) Repeat violations.**
- 23 **(3) Intentional violators.**

24 **(b) The civil penalty matrices established in this section must
 25 include the following factors to determine each penalty:**

- 26 **(1) The magnitude of the violation.**
- 27 **(2) The gravity of the effect of the violation.**
- 28 **(3) The preventability of the violation.**
- 29 **(4) The actions taken to prevent or correct the violation.**

30 **(c) The range of the penalties for each category of the civil
 31 penalty matrix is as follows:**

- 32 **(1) First time violations, one hundred dollars (\$100) to
 33 twenty-five thousand dollars (\$25,000) for each day of
 34 violation.**
- 35 **(2) Repeat violations, five hundred dollars (\$500) to fifty
 36 thousand dollars (\$50,000) for each day of violation.**
- 37 **(3) Intentional violators, ten thousand dollars (\$10,000) to one
 38 hundred thousand dollars (\$100,000) for each day of violation.**

39 SECTION 6. IC 13-18-10-8 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2007]: Sec. 8. **The department shall inspect each confined feeding
 42 operation, including CAFOs, at least one (1) time each year.**

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SECTION 7. IC 13-18-10-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. (a) Except as provided in subsection (b), each confined feeding operation shall pay an annual inspection fee of five hundred dollars (\$500).**

(b) Each confined feeding operation that is a CAFO shall pay an annual inspection fee of seven hundred fifty dollars (\$750).

(c) The fee collected under this section shall be deposited in the confined feeding inspection fund established under section 10 of this chapter.

SECTION 8. IC 13-18-10-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10. (a) The confined feeding operation inspection fund is established to permit the department to inspect confined feeding operations, including CAFOs, to determine compliance with this title.**

(b) The department shall administer the fund. Money in the fund is annually appropriated to the department for purposes of this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

SECTION 9. IC 15-3-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. The state chemist may shall adopt rules under IC 4-22-2 relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state.**

SECTION 10. IC 15-3-3-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 18. (a) The state chemist shall adopt rules to establish a training and educational program for manure haulers and applicators concerning the application to land of manure generated from a confined feeding operation (as defined by IC 13-11-2-40), including concentrated animal feeding operations (as defined by IC 13-11-2-38.3).**

(b) The program established under subsection (a) must include

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1 the following topics concerning manure hauling and application:

2 (1) Manure testing.

3 (2) Soil testing.

4 (3) Transportation.

5 (4) Manure application and handling.

6 (5) Any other topics determined by the state chemist.

7 SECTION 11. [EFFECTIVE JULY 1, 2007] (a) Before November
8 1, 2007, the state chemist shall submit a report concerning the
9 status of the manure handling program under IC 15-3-3-18, as
10 added by this act, to the general assembly in an electronic format
11 under IC 5-14-6.

12 (b) This SECTION expires July 1, 2008.

13 SECTION 12. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1197, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 5.

Page 1, line 8, delete "[EFFECTIVE JULY 1, 2007]" and insert "[EFFECTIVE UPON PASSAGE]".

Page 1, delete lines 11 through 17.

Page 2, delete lines 1 through 4.

Page 2, line 7, delete "[EFFECTIVE JULY 1, 2007]" and insert "[EFFECTIVE UPON PASSAGE]".

Page 2, line 7, after "A" insert "**new**".

Page 2, line 7, after "operation" insert "**, including a CAFO,**".

Page 2, line 9, delete "two (2) miles" and insert "**one (1) mile**".

Page 2, line 11, delete "nonpublic school." and insert "**child care center licensed under IC 12-17.2-4.**".

Page 2, between lines 12 and 13, begin a new line double block indented and insert:

"(C) A health facility licensed under IC 16-28."

Page 2, line 15, delete "[EFFECTIVE JULY 1, 2007]" and insert "[EFFECTIVE UPON PASSAGE]".

Page 3, delete lines 22 through 30, begin a new paragraph and insert:

"SECTION 4. IC 13-18-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. A person who violates this chapter is subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

(5) Section 7 of this chapter.

SECTION 5. IC 13-18-10-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) The department shall establish civil penalty matrices for the following categories:**

(1) First time violations.

(2) Repeat violations.

(3) Intentional violators.

(b) The civil penalty matrices established in this section must include the following factors to determine each penalty:

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- (1) The magnitude of the violation.
- (2) The gravity of the effect of the violation.
- (3) The preventability of the violation.
- (4) The actions taken to prevent or correct the violation.

(c) The range of the penalties for each category of the civil penalty matrix is as follows:

- (1) First time violations, one hundred dollars (\$100) to twenty-five thousand dollars (\$25,000) for each day of violation.
- (2) Repeat violations, five hundred dollars (\$500) to fifty thousand dollars (\$50,000) for each day of violation.
- (3) Intentional violators, ten thousand dollars (\$10,000) to one hundred thousand dollars (\$100,000) for each day of violation.

SECTION 6. IC 13-18-10-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8. The department shall inspect each confined feeding operation, including CAFOs, at least one (1) time each year.**

SECTION 7. IC 13-18-10-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. (a) Except as provided in subsection (b), each confined feeding operation shall pay an annual inspection fee of five hundred dollars (\$500).**

(b) Each confined feeding operation that is a CAFO shall pay an annual inspection fee of seven hundred fifty dollars (\$750).

(c) The fee collected under this section shall be deposited in the confined feeding inspection fund established under section 10 of this chapter.

SECTION 8. IC 13-18-10-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10. (a) The confined feeding operation inspection fund is established to permit the department to inspect confined feeding operations, including CAFOs, to determine compliance with this title.**

(b) The department shall administer the fund. Money in the fund is annually appropriated to the department for purposes of this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(e) Money in the fund at the end of a fiscal year does not revert

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to the state general fund.

SECTION 9. IC 15-3-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. The state chemist ~~may~~ **shall** adopt rules under IC 4-22-2 relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state."

Page 3, line 31, delete "SECTION 7. IC 13-18-10-2.7" and insert "SECTION 10. IC 15-3-3-18".

Page 3, line 33, delete "2.7. (a) The board" insert "**18. (a) The state chemist**".

Page 3, line 34, delete "department operated".

Page 3, line 34, delete "certification" and insert "**educational**".

Page 3, line 35, after "manure" insert "**haulers and**".

Page 3, line 36, after "operation" insert "**(as defined by IC 13-11-2-40), including concentrated animal feeding operations (as defined by IC 13-11-2-38.3)**".

Page 3, delete lines 37 through 42, begin a new paragraph and insert:

"(b) The program established under subsection (a) must include the following topics concerning manure hauling and application:

- (1) Manure testing.**
- (2) Soil testing.**
- (3) Transportation.**
- (4) Manure application and handling.**
- (5) Any other topics determined by the state chemist.**

SECTION 11. [EFFECTIVE JULY 1, 2007] **(a) Before November 1, 2007, the state chemist shall submit a report concerning the status of the manure handling program under IC 15-3-3-18, as added by this act, to the general assembly in an electronic format under IC 5-14-6.**

(b) This SECTION expires July 1, 2008."

Page 4, delete lines 1 through 12.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1197 as introduced.)

PFLUM, Chair

Committee Vote: yeas 7, nays 5.

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